IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.9.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.28606 of 2007

Crompton Greaves Limited,
represented by its Senior
Finance Manager,
G.Vijayakumar
3 Dr.MGR Salai,
Chennai - 600 034 .. Petitioner

vs.

1. The Assistant Commissioner (C.T.),
Fast Track Assessment Circle III,
Greams Road, Chennai - 600 006

2. The Deputy Commissioner (CT) (Appeals)
III Floor, Wavoo Complex,
191, N.S.C. Bose Road,
Chennai - 600 001 .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the second respondent herein in A.P.No.57 of 2005, dated 22.3.2006, and quash the same while directing the second respondent to re-dispose the appeal in A.P.No.57 of 2005.

For petitioner : Mr.N.Inbarajan

For respondents : Mr.Haja Nazirudeen
Special Government Pleader (Tax)

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O R D E R

1. Mr.Haja Nazirudeen, Special Government Pleader (Tax), takes notice for the respondents.

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2. With the consent of the learned counsels appearing on either side, the writ petition is taken up for final disposal.

3. Heard Mr.N.Inbarajan, the learned counsel appearing for the petitioner as well as Mr.Haja Nazirudeen, Special Government Pleader (Tax), for the respondents.

4. It is submitted by the petitioners that they are executing works contracts for various private and public sector undertakings. The petitioners are also registered dealers on the files of the Assistant Commissioner (C.T), Fast Track Assessment Circle, Chennai.

5. It is also submitted that their assessment for the year CST/2001-02, was completed by the first respondent, on 27.6.2005. During the relevant assessment year, they had supplied engineering goods to Power Grid Corporation of India Limited. Under the Supply Agreement, dated 24.4.2000, the petitioner had effected supplies by two modes, namely, (i) direct supplies from their factory situated at Ambad, Nasik, kanjur – Mumbai – Maharashtra State, and (ii) sales in transit effected by them on supplies made by vendors.

6. It is further submitted that for all the direct supplies made by the petitioners, they have remitted the appropriate Central Sales Tax in the despatching State with the Assessing Officer, Mumbai/Nasik Assessment Circle. Similarly, the vendors have also remitted the appropriate Central Sales Tax in their states with regard to the sale in transit effected by the petitioners. The vendors are also registered dealers in various states.

7. It is further stated that the petitioners had made a claim, under Section 6(2)(b) of The Central Sales Tax Act, 1956, in respect of the sale in transit effected by them. The petitioners are required to issue Form-C declarations to the vendor and obtain E-1 declaration forms from the vendors and the said forms are to be submitted to the Assessing Authority, the first respondent herein. Accordingly, the petitioners had claimed exemption on the turnover of Rs.8,07,58,834/- in the course of their original assessment, dated 27.6.2005. The first respondent had granted the exemption on the turnover of Rs.6,31,56,527/-. The exemption was granted in page seven of the original assessment order, dated 27.6.2005. Exemption was not granted on the balance turnover on the ground of non-submission of forms.

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8. Against the assessment order of the first respondent, dated 27.6.2005, the petitioners had filed a first appeal before the appellate authority, the second respondent herein. The hearing of the appeal was conducted, on 15.3.2006. The petitioners had appeared before the appellate authority through their Chartered Accountant, Mr.V.Narendran, and had submitted that the declaration forms could not be obtained on the balance turnover. However, the hearing of the appeal was concluded on the same day. Thereafter, by an order, in Ap.No.57 of 2005, dated 22.3.2006, the second respondent had, for the first time, stated that the petitioner had erroneously claimed the exemption on the entire turnover of Rs.8,07,58,834/-.

9. The second respondent had proceeded to discuss the question of eligibility of the petitioners even on the turnover, which was not disputed before him in appeal. Thus, the second respondent had decided the issue without a show cause notice and without giving an opportunity to the petitioners stating that the sale in transit was not allowable on the entire turnover of Rs.8,07,58,834/-, based on the various reasons stated therein. Even though the second respondent, in his appeal order, dated 22.3.2006, had stated that he was remitting the matter back to the Assessing Authority for a fresh assessment, the conclusions drawn by the second respondent against the petitioners, between pages 6 and 9 of his appellate order, without a show cause notice or opportunity being given to the petitioners, is contrary to law and the principles of natural justice. Therefore, the impugned appeal order, dated 22.3.2006, is illegal and invalid and liable to be set aside.

10. The only contention of the learned counsel appearing for the petitioners is that the Appellate Authority had made certain remarks, with regard to the enhanced tax payable by the petitioner, without giving an opportunity to the petitioners.

11. Mr.Haja Nazirudeen, Special Government Pleader, (Tax) appearing for the respondents, has not refuted the claims made by the petitioners.

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12. In such circumstances, the impugned appellate order, dated 22.3.2006, passed by the second respondent in Ap.No.57 of 2005, is set aside, and the second respondent is directed to decide the Appeal in Ap.No.57 of 2005, on merits and in accordance with law and pass appropriate orders thereon, after giving sufficient opportunity of hearing to the petitioners within a period of six weeks from the date of receipt of a copy of this order.

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With the above directions, the writ petition is disposed of. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Assistant Commissioner (C.T.)
   Fast Track Assessment Circle III,
   Greams Road, Chennai - 600 006

2. The Deputy Commissioner (CT) (Appeals)
   III Floor, Wavoo Complex,
   191, N.S.C. Bose Road,
   Chennai - 600 001

+ 1 cc to Mr. N. Inbarajan, Advocate SR No. 54949

+ 1 cc to the Spl Government Pleader, (Taxes) Chennai 104

SSV(CO)
SR/27.9.2007

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